



STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DRAFT BOARD ORDER

IN THE MATTER OF

BLUE SKY WEST, LLC) SITE LOCATION OF DEVELOPMENT ACT
Bingham & Mayfield Twp., Somerset County) NATURAL RESOURCES PROTECTION ACT
Kingsbury Plt., Abbot, and)
Parkman, Piscataquis County)
BINGHAM WIND PROJECT)
L-25973-26-C-Z) DENIAL OF APPEAL
L-25973-TG-D-Z) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§341-D (4) & 344; and Chapter 2, § 24 of the Department of Environmental Protection's regulations, the Board of Environmental Protection (Board) has considered the appeal of FRIENDS OF MAINE'S MOUNTAINS, its supportive data, the response of the applicant, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROCEDURAL HISTORY:

On April 19, 2013, Blue Sky West, LLC and Blue Sky West II, LLC filed a Site Location of Development Act (Site Law) and Natural Resources Protection Act (NRPA) application for a permit to construct the Bingham Wind Project located in the Towns of Bingham, Abbot, and Parkman, as well as Mayfield Township and Kingsbury Plantation. During the application process, the Department held two public meetings. The purpose of the meetings was to allow members of the public an opportunity to present their comments to the Department. The first public meeting was held on July 22, 2013 at the Moscow Elementary School in Moscow. On January 29, 2014 the Department released a Draft Staff Analysis of the project. The second public meeting was held on February 12, 2014 at the Quimby School in Bingham. The Department approved the application in Department Order #L-25973-26-A-N/L-25973-TG-B-N, dated September 8, 2014.

On October 6, 2014, the Friends of Maine's Mountains filed an appeal of the Department's decision to the Board. As part of this appeal, the appellants requested that the Board hold a public hearing.

The Board also received a timely appeal of the Department's licensing decision from Alice McKay Barnett. On October 28, 2014, the licensee filed a motion to dismiss Ms. Barnett's appeal arguing that Ms. Barnett had not demonstrated a particularized injury as a result of the licensing decision and therefore lacked standing to bring an appeal. Following a review of the record, the Board Chair found that Ms. Barnett had not

demonstrated that she was an “aggrieved person” and, in accordance with provisions of Chapter 2 §24(A), dismissed the appeal.

On November 12, 2014, the licensee filed its response to the appeal filed by Friends of Maine’s Mountains (FMM). The Board also received three responses to the FMM appeal from interested persons: one in support of the licensee submitted by Edward Ferreira and two in support of the appellant submitted by Michael Vernon and Carrol Dove, and Marthalia Furber. Marthalia Furber’s response to the appeal contained information that was determined to be beyond the scope of the appeal as well as proposed supplemental evidence. In accordance with Chapter 2 § 24, the Board Chair ruled on the admissibility of the additional evidence in decisions dated November 21, 2014 and December 12, 2014 and information not admitted was redacted from Ms. Furber’s response.

Following the issuance of the Department Order #L-25973-26-A-N/L-25973-TG-B-N, Blue Sky West, LLC and Blue Sky West II, LLC merged, with the surviving entity being Blue Sky West, LLC. This merger was approved in Department Order #L-25973-24-F-M/L-25973-TG-G-M, dated January 12, 2015.

2. PROJECT DESCRIPTION:

The permit issued approved the construction of a 62 wind turbine, up to 206 megawatt (MW), wind energy development which is an “expedited wind energy development” as defined in the Wind Energy Act (WEA), 35-A M.R.S. § 3451(4). The licensee proposes to use Vestas V112-3.0, Vestas V112-3.3, or Siemens SWT 3.0-113 turbines, which are rated to produce either 3.0 MW or 3.3 MW of power. In addition to the generating facilities, the project will include an operations and maintenance (O&M) building as well as associated facilities. The development of the O&M building will result in approximately 0.91 acres of impervious area. The Department approved the construction of 17 miles of crane path to provide access to the turbine pads. The overall project will include 83.78 acres of impervious area and 88.61 acres of developed area. The Department also approved the construction of an underground 34.5 kilovolt (kV) collector line along the ridges. The collector line will transition to above ground for a four mile segment along Route 16 and will continue above ground until it reaches the collector substation on the north side of Route 16 in Mayfield Township. From the collector substation in Mayfield Township, a 115 kV transmission line will be constructed that will extend above ground for 17 miles, through Kingsbury Plantation and the Town of Abbot, before connecting to an existing substation owned by Central Maine Power Company in the Town of Parkman.

3. STANDING:

The appellant is a nonprofit organization dedicated to protecting the mountains of Maine from threats to their natural and human environments. The appellant states that its organization is supported by individuals who reside near the proposed project and individuals who hike and engage in recreational activities in and around the location of project site.

The Board finds that the appellant, Friends of Maine's Mountains, is an aggrieved person as defined in Chapter 2, Section 1(B) and may bring this appeal before the Board.

4. FINDINGS & CONCLUSIONS OBJECTED TO:

The appellant objects to the Department's findings and conclusions relating to the following:

- A. Financial Capacity: The licensee has demonstrated adequate financial capacity to comply with Department standards;
- B. Scenic Character: The proposed project will not have an unreasonable adverse effect on the scenic character of any scenic resource of state of national significance or related existing uses;
- C. Wildlife and Fisheries: The proposed project will not have an adverse impact on wildlife or fisheries;
- D. Decommissioning: The licensee provided an adequate decommissioning plan and has demonstrated the means to execute the plan; and
- E. Tangible Benefits: The proposed project will provide significant tangible benefits.

5. REMEDY REQUESTED:

The appellants request that the Board hold a public hearing and that the Board reverse the September 8, 2014 Department decision approving the Bingham Wind Project.

6. REQUEST FOR A PUBLIC HEARING:

During the Department's processing of the application, it received one timely request for a public hearing, on May 30, 2013. In a June 17, 2013 letter, the Department found that the request did not establish that there was credible conflicting technical information regarding the licensing criteria and denied the request for a public hearing. The Department also received several requests for a public hearing that were denied because they were not submitted within 20 days of the application being accepted as complete for processing as required by Chapter 2.

The Department held two public meetings to solicit public comment on the proposed project. On July 22, 2013, the Department held a public meeting at the Moscow Elementary School in Moscow, and on February 12, 2014, the Department held a second public meeting at the Quimby School in Bingham. Information submitted at the public meeting was included in the project record. This information related primarily to scenic character, noise and public safety. In support of its request that the Board conduct a public hearing, the appellant states that there is "credible conflicting technical information regarding the licensing criteria"; however, the appeal fails to state what the credible conflicting technical information is, the standard it relates to, or how holding a public hearing will assist the Board in rendering its decision.

The Board finds that the record is adequately developed with regard to the statutory criteria, and the appellant did not demonstrate that there is sufficient credible conflicting technical information regarding the project to warrant a public hearing on this appeal.

7. RESPONSE TO APPEAL:

A. FINANCIAL CAPACITY:

FMM argues that the licensee has not demonstrated adequate financial capacity for the proposed project. The appellant asserts that First Wind Holdings, which is a parent company of the licensee, is losing money at a rate of \$11 million per month. In addition, the appellant asserts that a more exhaustive and rigorous financial capacity test is necessary. The appellant also states that the financial capacity special condition in the approved Department Order could allow the licensee to start construction of the project prior to the demonstration of final financial capacity, which should not be allowed. Lastly, the appellant asserts that the submission of unaudited balance sheets is insufficient to make any assumptions regarding financial capacity.

In its response to the appeal, the licensee states that Special Condition #5 does not allow it to start construction until it has demonstrated financial capacity to construct the project. The licensee also states that the licensee's parent company (First Wind) has more than 16 operating wind power projects and the appellant is unable to cite any example of First Wind defaulting on its financial obligations.

Under 38 M.R.S. § 484(1) of the Site Law, the Department requires an applicant to demonstrate financial capacity to develop the project in a manner consistent with State environmental standards and with the provisions of the Site Law. However, 38 M.R.S. § 484(1) gives discretion to the Commissioner to issue a permit with a special condition which allows an applicant to provide evidence of final financial assurance, that is suitable to the Department, after the issuance of the permit, but prior to the commencement of construction.

The proposed project is estimated to cost \$398 million to construct. The licensee indicated that the project will be financed with a combination of equity and third party debt financing. As part of its application, the licensee submitted a copy of a letter from RBS Securities, Inc., a financial institution that stated that the licensee would likely be able to obtain financing for the project. The licensee also included a copy of its balance sheet which indicates that the licensee's parent company has over \$2.1 billion dollars in assets.

Special Condition #5 of Department Order #L-25973-26-A-N/L-25973-TG-B-N reads:

“Prior to the start of construction, the applicant shall submit evidence that they have been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of

financial assurance determined by Department to be adequate under Chapter 373(1), for review and approval by the Department.”

After considering the arguments by the appellant, the evidence in the record, and the requirements of the Site Law, the Board finds that the financial capacity standard was correctly applied. The use of unaudited balance sheets is acceptable at the application stage because the licensee must demonstrate final financial capacity in accordance with Special Condition #5 prior to construction.

Therefore, based on the evidence in the record, the Board finds that the Commissioner’s decision including Special Condition #5 is consistent with State environmental standards and the provisions of the Site Law.

B. SCENIC CHARACTER:

The appellant asserts that the Department erred and did not assess cumulative impacts to scenic character and uses relating to scenic character of the Appalachian Trail and other Scenic Resources of State or National Significance (SRSNS) from this and other wind projects in Maine. The appellant specifically mentions existing impacts on the Appalachian Trail from the Kibby Wind Project, the Roxbury Wind Project and the Spruce Mountain Wind Project. The appellant also asserts that the WEA did not contemplate projects of the scope and scale of the Bingham Wind Project and that the licensee’s Visual Impact Assessment is based on an outdated and inadequate methodology. FMM also asserts that the provision for radar activated night lighting of turbines has no remedial value because it may never be approved and implemented.

In its response to the appeal, the licensee states that the Wind Energy Act sets forth a specific standard for assessing scenic impacts and that it has complied with that standard. The licensee states that the Department correctly applied the review criteria in the WEA to the project. The licensee also states that there is no legal basis to assess cumulative impacts from all projects in the state that could have a view of the Appalachian Trail.

The licensee submitted a visual impact assessment (VIA) conducted by LandWorks as part of its permit application. The VIA assessed the impact of the project on all of the SRSNS within eight miles of the project. The Wind Energy Act, 35-A M.R.S. §3453, limits the Department’s assessment of a project’s visual impact to those SRSNS that are located within eight miles of the project. The evidence submitted by the licensee demonstrates that an approximately 13 mile long stretch of the Appalachian Trail is located within eight miles of the project. However, this section of the trail, which includes the lean-to site, is located below the tree line and does not have any views of the proposed project. The remaining portions of the Appalachian Trail mentioned by the appellant are located greater than eight miles from the project, and the Department did not consider potential impacts there because the WEA deems insignificant any effects of the project’s generating facilities located more than eight miles away from the SRSNS.

In its review of the application, the Department retained Scenic Quality Consultants (SQC) to peer review the licensee's VIA. SQC visited the project site on July 22, 2013 and July 23, 2013 and provided the Department with comments in reports dated August 1, 2013 and August 23, 2013. In "Review of the Bingham Wind Project Visual Impact Assessment, Part 1: Adequacy," SQC reviewed the licensee's VIA to determine whether it addressed the WEA's scenic evaluation criteria in a valid and reliable way such that another qualified professional would obtain similar results. SQC found the VIA to be adequate and of a quality commonly found in professionally prepared VIAs.

SQC also conducted an independent review of the scenic impact of the proposed project. SQC ranked twelve SRSNS in a report entitled "Review of the Bingham Wind Project Visual Impact Analysis, Part 2: Independent Assessment," dated August 23, 2013. As set forth in the WEA, the impacts related to the twelve SRSNS located within eight miles of the project were evaluated by SQC based on the significance of the resource; character of surrounding area; typical viewer expectations; development's purpose and context; extent, nature, and duration of uses; effect on continued use and enjoyment; and, scope and scale of project views. SQC rated each criterion for each of the twelve SRSNS with ratings between "none" to "high" and then determined an overall scenic impact to those SRSNS. SQC confirmed that the project will not be visible from the portion of the AT located within eight miles of the project and concluded that the project will not result in an unreasonable adverse effect on any SRSNS. A summary of SQC's conclusions on individual SRSNS can be found in the table below.

Scenic Resources of State or National Significance	Overall Scenic Impact
Historic Sites	
Arnold Trail to Quebec	Low
Bingham Free Meetinghouse	None
National Park/Designated Pedestrian Trail	
Appalachian National Scenic Trail	None
Great Ponds	
Bald Mountain Pond	Low
Jackson Pond	None
Punchbowl Pond	Medium
Segment of a Scenic River	
Wyman Lake	Low
Kennebec River	Low
Piscataquis River	None
East Branch of The Piscataquis River	None
West Branch of The Piscataquis River	None
Scenic Turnout on a Scenic Highway	
Old Canada Scenic Byway (Route 201) Turnout	None

With respect to the scenic impact of night lighting, the appellant asserts in its appeal that the requirement that the licensee incorporate radar activated night lighting once the Federal Aviation Administration (FAA) approves it for use at wind power developments is purely speculative and may take decades to be approved. The record shows that the FAA requires that the project be equipped with warning lights and that the licensee has proposed to incorporate the use of radar activated lighting once it is approved for use by the FAA. The FAA has indicated that it will be approving the use of radar activated night lighting at wind power developments, but it has not provided any timeline for that approval. Based on the review of the VIA, the Board finds that the SRSNS will receive minimal lighting at the night from the turbines when using traditional FAA lighting. The use of the radar activated lights if eventually approved for the project will further minimize the nighttime impact.

The Board considered the arguments by the appellant, the licensee's response to the appeal, and the evidence in the record. In its review of the information in the record, the Board considered potential cumulative impacts in the sense of whether multiple wind projects could be seen from any of the SRSNS within eight miles of this project. Of the three wind energy developments noted by the appellant (Kibby Wind, Roxbury Wind, and Spruce Mountain), the nearest project (Kibby Wind) is about 40 miles from the Bingham Wind project. There are no SRSNS located both within eight miles of the Bingham Wind project and within eight miles of another existing or proposed wind energy development, and on that basis the Board finds that there will be no unreasonable cumulative impact on any SRSNS or users of SRSNS located within an eight mile radius of the project as a result of the proposed project. The evidence reflects that the generating facilities of the proposed project cannot be seen from any portion of the Appalachian Trail that is located within eight miles of the project. The WEA directs that any views of the project from a SRSNS that are from beyond the eight mile radius must be considered insignificant, and thus the Board does not consider any impacts the proposed project may have based on potential views of it from other sections of the Appalachian Trail.

Based on the evidence in the record, the Board finds that the project will not have an unreasonable adverse effect on the scenic character or the existing uses related to the scenic character of any SRSNS located within eight miles of the generating facilities.

C. WILDLIFE AND FISHERIES:

The appellant asserts that the Department did not adequately assess the project's impact on Bald Eagles, Golden Eagles and bats. The appellant also asserts that the condition in the Department's Order requiring modified operation or detection systems for avian species will not provide adequate protections for those species. However, the appellant has not provided any details on how the Department erred in its decision or identified evidence in the record of the anticipated impacts.

In response to the appeal, the licensee argues that the results of its studies demonstrate that the project will not result in an adverse impact on wildlife. The

licensee also states that the appellant has not pointed to any evidence in the record to dispute the conclusions that were reached in the Department Order.

As part of its application, the licensee submitted the results of the following studies: aerial Bald Eagle surveys (fall 2009, spring 2010 and spring 2011), nocturnal radar migration surveys (spring 2010, fall 2010 and fall 2011), acoustic bat surveys (spring, summer and fall 2010), diurnal raptor migration surveys (spring and fall 2010) and breeding bird surveys (spring 2010) which evaluate bird and bat species presence and use of the project area. Based on the results of the studies, the licensee concluded that the project will not result in an unreasonable impact to wildlife. The evidence submitted by the licensee, reflects that the closest Bald Eagle nest is approximately five miles from the closest turbine.

The project was reviewed by biologists with the Maine Department of Inland Fisheries and Wildlife (MDIFW). MDIFW reviewed the application and commented that both Golden and Bald Eagles are protected under federal law, the Bald and Golden Eagle Protection Act, and the United States Fish and Wildlife Service has the sole authority for implementation of that federal law. MDIFW commented that there are no known Golden Eagle nests near the project and that only an occasional transient Golden Eagle may visit the project area in any given year. Based on this information, MDIFW does not anticipate that the project will have an impact on Golden Eagles. MDIFW stated that should the activity level of Golden Eagles increase in the project area, MDIFW has the ability to advocate that the licensee apply for an incidental take permit under Maine's Endangered Species Act for any adverse impacts. MDIFW maintains a record of all known Bald Eagles nests in the state and conducts periodic aerial surveys to locate new nests and to monitor the health and population of the species. MDIFW's opinion is that, based on the abundance and distribution of Bald Eagles in Maine and location of known Bald Eagle nests in the project area, it does not anticipate an adverse impact on the species.

MDIFW also reviewed the results of the licensee's bat surveys. MDIFW typically recommends the use of curtailment at wind power projects to reduce bat mortality. In its project review comments, MDIFW recommended that the licensee curtail operations as follows: "Wind turbines only operate at cut-in wind speeds exceeding 5.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period April 20 – June 30; 6.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period July 1 – September 30; and 5.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period October 1 – October 15. Cut-in speeds are determined based on mean wind speeds measured at the hub heights of a turbine over a 10-minute interval. Turbine blades will be feathered during these low wind periods to minimize risks of bat mortality. These cut-in speeds are independent of ambient air temperature."

In light of MDIFW's comments, the Department reviewed numerous peer reviewed scientific papers regarding mitigation strategies to reduce bat mortality at wind farms and, following further consultation with MDIFW and the applicant, determined that

further curtailment (which has been found to help minimize the risk of bat mortality at wind energy facilities) was appropriate and conditioned the permit as follows:

Wind turbines must operate only at cut-in wind speeds exceeding 6.0 meters per second each night (from at least ½ hour before sunset to at least ½ hour after sunrise) during the period of April 20–October 15. Cut-in speeds are determined based on mean wind speeds measured at the hub heights of a turbine over a 10-minute interval. Turbine blades will be feathered during these low wind periods to minimize risks of bat mortality. These cut-in speeds are independent of ambient air temperature.

To ensure that the project would not result in an adverse impact on birds and bats, MDIFW recommended that any permit issued include requirements for mortality monitoring. MDIFW recommended that mortality monitoring occur in operation years one and two, with a third year of monitoring occurring between years three and five. In addition, if the results of the monitoring reveal that one or more turbines are resulting in an adverse impact on birds and/or bats, the licensee is required to modify operations in accordance with Special Condition #33 of the Department Order, which reads:

If the Department determines that one or more turbines are causing an unreasonable adverse impact on bats or birds as determined by the Department in consultation with MDIFW, the applicant shall modify operation of specific turbine(s) or the entire facility to limit impacts on the affected specie(s) in accordance with a plan reviewed and approved, and, if applicable, as modified, by the Department. The Department will notify the applicant in writing of the basis for its determination. Within 60 days of receiving notice, the applicant shall submit an application for a permit modification or amendment in accordance with Chapter 2 which includes a written plan that details the specific measures to reduce the impacts to the species of concern for Department review and approval. The plan may include but is not limited to modified operations, such as additional nighttime curtailment or reduced/suspended operations during high risk periods, use of detection/deterrence methods to limit impacts to affected species, or habitat management. The plan shall include a schedule for implementation. If the application is approved, the applicant shall comply with the terms and conditions of the permit. If the application is not submitted within the time prescribed, or is wholly or in part denied, returned, or withdrawn, then within thirty (30) days of failing to submit within the time prescribed, denial, return, or withdrawal, the applicant shall cease operation of the one or more turbines resulting in the unreasonable adverse impact on bats or birds.

The Board has considered the arguments by the appellant, the response of the licensee, and the evidence in the record. Based on the evidence in the record, and MDIFW's comments on the project and its expertise in assessing and managing the State's wildlife population, the Board finds that the project will not result in an unreasonable adverse impact on Golden Eagles, Bald Eagles or bats. In addition, the

Board finds that Special Condition #33, requiring modified operations in the event that one or more turbines causes an adverse impact on birds and/or bats, will result in an increased level of protection for birds and bats.

Therefore, the Board finds that the licensee has made adequate provision for the protection of wildlife, including Golden Eagles, Bald Eagles and bats.

D. DECOMMISSIONING PLAN:

The appellant argues that the estimated cost of the decommissioning projected by the licensee is grossly underestimated. The appeal references the September 30, 2013, comments the appellant submitted during the Department's review of the project, regarding the licensee's proposed decommissioning plan. The appellant asserts that, based on decommissioning cost estimates from other wind power projects around the country, the licensee's decommissioning plan is underfunded. Included in these comments is the assertion that in its estimate, the licensee used the wrong type of scrap steel, underestimated the cost of scrap steel, due to the market's volatility, and assumed an unrealistic amount of time to dismantle the turbines into scrap sizes. The appellant restates in its appeal its objections, previously stated in its September 30, 2013 comments, and requests an objective analysis of decommissioning requirements, including demolition costs and scrap values.

In the licensee's response to the appeal, it states that its estimates are based on the specific civil and electrical site plans for the project, discussions with contractors familiar with the construction of wind projects in Maine, and its professional judgment. In addition, its estimate includes a contingency of 10% as an additional measure of conservatism.

The Department updated the submission requirements for decommissioning plans in 2013, requiring the decommissioning plan be fully funded prior to the start of project construction. In addition, the submission requirements allow for a project developer to include the recovery of scrap metal in its plan.

As part of the application, the licensee submitted information from independent agencies that the turbines are certified to have a minimum useful life of 20 years. The licensee also submitted a cost estimate to decommission the project prepared by the James W. Sewell Company, a professional engineering firm. The plan was based on the design of the project and Sewell's experience and the licensee's experience with the construction of wind energy developments. The licensee's plan estimates it will cost approximately \$1,605,410 to decommission the project if Vestas turbines are used and \$1,722,510 if Siemens turbines are used. These estimated costs take into account scrap steel value. The Department Order requires the decommissioning plan to be fully funded prior to the start of construction.

During the Department's review process, the licensee submitted a letter from the James W. Sewell Company dated February 7, 2014 responding to the appellants concerns raised in its September 30, 2013 comments regarding its assumptions of the

value of scrap steel. The letter stated that the licensee contacted five salvage companies in Maine to determine how they would grade steel from a wind turbine. The letter stated that the five companies either confirmed that #1 steel is the correct type of steel to use in the estimate or those companies do not use the #2 steel classification when they conduct business, as the appellant has argued.

The Board finds that the evidence submitted by the licensee is credible and reflects a reasonable effort to predict the decommissioning costs. In addition, Special Condition #6 of the Department Order helps address the volatility of the scrap steel market and the potential changes in deconstruction costs. The condition reads, in part:

The applicant must re-evaluate the decommissioning cost and update financial assurance to reflect the current decommissioning costs at the end of years five, ten, and fifteen.

The Board has considered the arguments by the appellant, the response to the appeal filed by the licensee, and the evidence in the record. The decommissioning plan as provided by the licensee is a credible estimate of the cost to decommission the project. Furthermore, Special Condition #6 provides a reasonable mechanism for periodically reassessing salvage values for whenever decommissioning occurs, and adjusting the decommissioning fund should salvage value expectations change.

Therefore, the Board finds that the licensee has made adequate provisions for the decommissioning of the project.

E. TANGIBLE BENEFITS:

The appellant argues that the Department inappropriately deferred to the licensee's assertions of tangible benefits and did not factor in tangible impacts of the project. The appellant references comments it submitted on September 30, 2013 during the Department's review of the application, regarding the project's tangible benefits. In its September 30, 2013 comments, the appellant asserted that the Department should evaluate the project's net tangible benefits (tangible benefits minus tangible impacts). Furthermore, the appellant asserts that the Department's tangible benefits assessment did not consider what it contends are the diminished necessity, value and benefits of wind energy.

In its response to the appeal, the licensee states that during the project review, it demonstrated, and the Department correctly found, that the project will provide significant tangible benefits. Moreover, the appellant's complaints are not supported by the review criteria in the WEA.

In the WEA, 35-A M.R.S. §3454, the Legislature enunciates some presumptions that the Department does not analyze with respect to individual wind power projects proposed, and directs the Department's review of tangible benefits as follows:

In making findings pursuant to Title 38, section 484, subsection 3, the primary siting authority shall presume that an expedited wind energy development provides energy and emissions-related benefits described in section 3402 and shall make additional findings regarding other tangible benefits provided by the development.

As part of any permit application for an expedited wind energy development, the applicant shall include the following information regarding tangible benefits, except that the applicant may submit the information required under paragraph D as an addendum to the permit application during the period in which the application is pending:

- A. Estimated jobs to be created statewide and in the host community or communities, as a result of construction, maintenance and operations of the project;
- B. Estimated annual generation of wind energy;
- C. Projected property tax payments;
- D. A description of the community benefits package, including but not limited to community benefit agreement payments, to be provided in accordance with the requirements of subsection 2; and
- E. Any other tangible benefits to be provided by the project.

The WEA, 35-A M.R.S. §3454(2) states in pertinent part that:

Except as provided in subsection 3, to demonstrate that an expedited wind energy development provides significant tangible benefits as required in Title 38, section 484, subsection 10, the applicant for an expedited wind energy development is required to establish a community benefits package valued at no less than \$4,000 per year per wind turbine included in the expedited wind energy development, averaged over a 20-year period. This subsection does not affect the property tax obligations of an expedited wind energy development.

The evidence in the record demonstrates that the licensee entered into community benefit agreements with the Towns of Bingham (\$106,900 per year), Moscow (\$20,000 per year), Abbot (\$20,000 per year), and Parkman (\$20,000 per year). In addition, the licensee proposed to make annual payments to Kingsbury Plantation (\$176,000 per year). All of the above payments are committed to be made annually for 20 years, the expected life of the project.

The Board finds that the annual payments made to the Towns of Bingham, Moscow, Abbot, Parkman, as well as Kingsbury Plantation, as part of the community benefits agreements total \$5,530 per turbine per year for 20 years, which exceeds the \$4,000 per turbine per year for 20 years required in 35-A M.R.S. § 3454(2). The appellant's assertion that tangible benefits should be assessed in a "net" fashion is contrary to the WEA and beyond the scope of the Board's authority.

Therefore, the Board finds that the project will provide significant tangible benefits in accordance with 35-A M.R.S. §3454.

Based on the above findings, the Board concludes that:

1. The appellants filed a timely appeal.
2. The Board denies the request for a public hearing for this appeal.
3. The licensee's proposal to construct a 62 turbine wind energy development known as the Bingham Wind Project in the Towns of Bingham, Abbot, and Parkman as well as Mayfield Township and Kingsbury Plantation meets the criteria for a permit pursuant to Natural Resources Protection Act 38 M.R.S. § 480-A et seq; the Site Location of Development Law, 38 M.R.S. § 481 et seq; and the Wind Energy Act, 35-A M.R.S. §§3401-3457.

THEREFORE, the Board AFFIRMS Department Order #L-25973-24-A-N/L-25973-TG-B-N approving the application of BLUE SKY WEST, LLC, to construct the Bingham Wind Project in the Towns of Bingham, Abbot, and Parkman as well as Mayfield Township and Kingsbury Plantation, Maine and DENIES the appeal of FRIENDS OF MAINE'S MOUNTAINS and the request for a public hearing. All other findings of fact, conclusions and conditions in Department Order #L-25973-24-A-N/L-25973-TG-B-N remain as originally approved and are incorporated herein.

DONE AND DATED AT AUGUSTA, MAINE, THIS _____ DAY OF _____, 2015.

BOARD OF ENVIRONMENTAL PROTECTION

By: _____
James W. Parker, Chair

